

BILL NO. S-94-02 16

SPECIAL ORDINANCE NO. S- 12-94

AN ORDINANCE approving CONTRACT
between KLF BUSINESS COMMUNITY
SYSTEMS, INC. and the City of Fort
Wayne, Indiana, in connection with
the Board of Public Works.

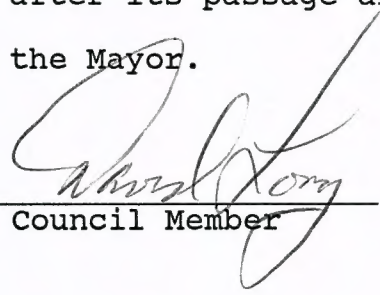
NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONTRACT by and between KLF
BUSINESS COMMUNITY SYSTEMS, INC. and the City of Fort
Wayne, Indiana, in connection with the Board of Public
Works, for:


internal wiring of telecommuni-
cations electronics for the City-
County Building, Police Operations
Center and the Lafayette Street
Complex;

the contract price is Seven Hundred Fifty Thousand and
no/100 Dollars (\$750,000.00), all as more particularly
set forth in said Contract, which is on file in the
Office of the Board of Public Works and, is by reference
incorporated herein, made a part hereof, and is hereby in
all things ratified, confirmed and approved. Two (2)
copies of said Contract are on file with the Office of
the City Clerk and made available for public inspection,
according to law.

SECTION 2. That this Ordinance shall be in full
force and effect from and after its passage and any and
all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCaulay, City Attorney

Read the first time in full and on motion by Long, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 2-8-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, seconded by _____, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 3-8-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. S-12-94

on the 8th day of March, 1994.

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)
Don J. Schmitter
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 9th day of March, 1994, at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 10th day of March, 1994, at the hour of 8:00 o'clock A. M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

The KLF contract covers the following items:

Internal Wiring:

Police Operations Center (McMillen Foundation Pays in Full)	\$108,711
City-County Building	312,632
Cable Management System	18,640

Fiber Electronics, or Multiplexors:

City-County Building, Lafayette Complex, and POC	<u>346,473</u>
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KLF Total	<u>\$786,456</u>
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On March 22, a telecommunications financing lease will be introduced to City Council. The lease will finance a total of approximately \$1.5 million in telecommunications equipment over a seven year period. This includes the KLF contract and GTE contracts for fiber optic cable between the City-County Building and the Lafayette Complex, and the Lafayette Complex and the Police Operations Center, and telephone instruments and consoles. The latter two contracts will be introduced to City Council on March 22 also. **The lease payments are already in the City's 1994 budget for the Debt Service Fund and will not be charged directly to departments.** The GTE network services costs are annual operating costs and are not a part of the lease financing picture.

These contracts are critical to getting the Police Operations Center up and running on time. We expect to get telecommunications service to the building by July 1, 1994 at the latest, so that the Police Department move will be fully complete by that date.

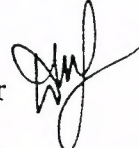
We firmly believe that the telecommunications area is the primary area where the City of Fort Wayne will achieve productivity gains in the next decade. There are many examples. We will be able to provide voice mail for City Councilmembers and, on that system, announcements for constituents district by district. We will automate City Utilities Customer Service through an automatic call distribution and interactive voice response system. Each customer service agent will be able to deal with more customers in a given workday. Many customers will be able to get all of the information they need without talking to an agent. Police reports will be automated through voice mail, and officers will be able to get back in service quicker after an accident or incident. We will be able to offer fax on demand services to citizens who need copies of City policies, ordinances, and resolutions. This technology is evolving very quickly, and there are fewer and fewer limitations to what it can accomplish every day.



The City of Fort Wayne

Paul Helmke, Mayor

DIVISION OF FINANCE AND ADMINISTRATION CITY COUNCIL COVER LETTER

To: City Council Members
From: Douglas M. Lehman, City Controller 
Date: March 2, 1994
Subject: GTE and KLF Telecommunications Contracts

On February 8, the Administration introduced shell ordinances for telecommunications contracts for network services (GTE) and internal wiring of the City-County Building and the Police Operations Center (KLF). We met with Councilmembers Tom Henry and Don Schmidt (Vice President and President at the time) to provide background on the contracts. On March 2, the Board of Public Works approved both contracts. City Council will discuss them on March 8. Both ordinances will be up for passage on March 22.

These contracts are the result of approximately 18 months of effort by a Telecommunications Platform Selection Committee composed of myself, Rick Krebs (SCT Site Director), and Cliff Simon (the City's retained telecommunications consultant), President of Direct-Tel Corporation. Our telecommunications system was beginning to fail and we knew that we had to begin work on a new platform. We studied the issue in great depth. We went to Research Triangle Park, North Carolina for three days to review the capabilities of Northern Telecom's DMS-100 switch (used by GTE in Fort Wayne for digital Centrex service). We went to Dallas for three days to review the capabilities of Northern Telecom's Meridian family of PBX (private branch exchange) switches. We conducted numerous conference calls with telecommunications vendors and experts all over the country. We visited KLF's Rolm switch customers in Fort Wayne and Indianapolis. We talked at length with managers at the City of Indianapolis and the City of Tulsa who had recently completed new platform installations.

Based on all of that research, we issued a detailed 116 page request for proposal (RFP) on July 29, 1993. Five companies responded to the RFP: GTE (Centrex), GTE (Meridian PBX), KLF (Rolm PBX), United Telecommunications (Meridian PBX), and AT&T (Definity Generic 3 PBX). Based on extensive discussions with the committee and review of the RFP responses, the network services and fiber optic cable contracts were awarded to GTE (Centrex) and the internal wiring and fiber electronics contract was awarded to KLF.

The GTE network services contract is a ten year contract, with a five year termination liability. The contract cost per line per month is \$8.40. We have approximately 850 lines. The approximate annual value of the contract is \$85,680. The approximate ten year value is \$856,800. **This is approximately \$1.50 per line per month lower than our current telecommunications cost.**

KLF Business Communication Systems

PURCHASE AGREEMENT

AGREEMENT NO. _____

BILLING ADDRESS

INSTALLATION ADDRESS

COMPANY NAME (CORRECT LEGAL NAME)

City of Fort Wayne

ADDRESS

One Main Street

CITY

Fort Wayne

STATE

IN

ZIP

46802-1804

COUNTY

Allen

CONTACT PERSON

Doug Lehman

TELEPHONE NO.

219-427-1349

ADDRESS

One Main Street

CITY

Fort Wayne

STATE

IN

ZIP

46802-1804

COUNTY

Allen

IMPLEMENTATION DATE

July 1, 1994

PURCHASE PRICE

NOTICES SENT TO:

IF TO CUSTOMER

IF TO KLF

ATTENTION:

ATTENTION:

This Agreement is entered into by and between KLF Business Communication Systems, ("KLF") and City of Fort Wayne ("CUSTOMER"). In consideration of the mutual agreements contained herein, KLF agrees to sell to CUSTOMER, and CUSTOMER agrees to purchase from KLF, this Project as specified in Schedule A according to the following terms and conditions:

TERMS AND CONDITIONS - PLEASE READ CAREFULLY BEFORE SIGNING

1. ACCEPTANCE OF AGREEMENT

Execution of this Agreement by CUSTOMER shall not result in a binding agreement until it is signed by a duly authorized officer of KLF.

2. PURCHASE PRICE AND CHANGES

The Purchase Price for this Project shall be as specified in Schedule A and does not include applicable taxes unless otherwise indicated thereon. This Project shall consist of all equipment and products purchased hereunder, including any software licensed by CUSTOMER pursuant to this Agreement, all as specified in Schedule A or Schedule B.

Additions, deletions, changes or reconfigurations of this Project after acceptance of this Agreement and before the Implementation Date may be made only by an Installation Change Order ("ICO") signed by both parties. The price of an ICO shall be as listed in KLF's then current price list. The amount of credit for deletions shall be equal to the price at which the deleted item(s) was ordered originally.

The parties shall agree on the price of items not on said lists before KLF performs the ICO. Any ICO may delay the Implementation Date.

3. TAXES

CUSTOMER shall pay any municipal, county, state or federal sales, excise, or other taxes and fees which may be levied upon the sale, transfer of ownership, installation or use of this Project, except for any tax assessed upon KLF's net income. Said tax payments shall be made according to requirements of local law and are due and payable upon invoice by KLF or as assessed and billed directly to CUSTOMER.

4. PREVAILING WAGE RATES/OTHER COSTS

The Purchase Price for this Project does not reflect the impact when required by law, or otherwise, of paying "PREVAILING WAGE RATES". When such rates are higher than those used in computing this Project's cost herein, the Purchase Price shall be increased by the difference. CUSTOMER shall notify KLF if Prevailing Wage Rates may be applicable to this Agreement.

Unless otherwise stated in this Agreement or any pricing schedule attached hereto, the Purchase Price does not include the cost for removal of any pre-existing cable, wire, or equipment from CUSTOMER's premises ("the Premises"), or if pre-existing cable or wire is utilized, the cost to bring such cable or wire up to local code requirements. CUSTOMER, at its expense, shall be responsible for removal or upgrade of cable, wire, or equipment, if required, whether due to federal, state or local rules or regulations, or otherwise.

5. PAYMENT TERMS

CUSTOMER agrees to pay progress payments for this Project as follows: 20% of the Purchase Price upon the execution of this Agreement by CUSTOMER; 45% of the Purchase Price upon delivery of the Equipment to the Premises or stored at KLF facilities if acceptable space on CUSTOMER premises is not available; 30% of the Purchase Price at implementation; and the remaining 5% of the Purchase Price within ten (10) days after the Implementation Date. The above payments are due on the occurrence of the stated events. If there are multiple systems/sites included in this Purchase Agreement, the above stated terms will apply to each separate system/site. In cases where the above stated terms are not applicable, progress billings will be issued as work is completed, with payment due net ten (10) days.

KLF and CUSTOMER each represent that the individual signing this Agreement on its behalf has the power and authority to enter into this Agreement and that this Agreement constitutes a valid and binding obligation of such party.

CUSTOMER: City of Fort Wayne

KLF BUSINESS COMMUNICATION SYSTEMS

SIGNATURE: _____

SIGNATURE: _____

PRINTED NAME: Doug Lehman

PRINTED NAME: _____

TITLE: City Controller

TITLE: _____

DATE SIGNED: _____

DATE ACCEPTED: _____

In the event that CUSTOMER delays KLF's performance under this Agreement for its own convenience or because of failure to timely perform its obligations under Section 9, Conditions for Installation and Access, CUSTOMER shall pay the above payments on the scheduled dates and, in addition, pay KLF's actual costs, if any, resulting from the delay. If the delay continues longer than two months, CUSTOMER shall pay any increase in the price of this Project prior to the actual Implementation Date. In such event, the Implementation Date shall be postponed as mutually agreed.

6. FINANCING OPTION

CUSTOMER may assign this Agreement to a financing company for the sole purpose of financing the purchase of this Project. CUSTOMER understands and agrees that its assignment of this Agreement for the purpose of financing the purchase of this Project shall not relieve CUSTOMER of its obligation to make progress payments under Section 5. In such case, all progress payments under Section 5 that CUSTOMER pays KLF shall be promptly refunded upon KLF's receipt of said payments or the Purchase Price from the financing company.

7. TITLE TO EQUIPMENT/SECURITY INTEREST

CUSTOMER shall acquire good and free title to this Project, except the software, upon full payment of the Purchase Price.

CUSTOMER, for valuable consideration, receipt of which is hereby acknowledged, grants to KLF a purchase money security interest in this Project and all other KLF-supplied products, whenever acquired, to secure payment of the Purchase Price.

CUSTOMER authorizes KLF to prepare and file in KLF's name alone all financing statements deemed necessary by KLF to perfect its security interest, and in jurisdiction where CUSTOMER's signature is required, to sign the signature of CUSTOMER to such financing statements as attorney-in-fact.

8. RISK OF LOSS

KLF shall bear the risk of loss, damage, or destruction of this Project, and all additions thereto, while it is in transit to CUSTOMER's Premises. The risk of loss, damage, or destruction of this Project, and all additions thereto, shall be borne by CUSTOMER upon delivery of this Project to the Premises, unless such loss, damage, or destruction is caused by the negligence of KLF, its agents, or subcontractors.

9. CONDITIONS FOR INSTALLATION AND ACCESS

Prior to the scheduled delivery of the equipment, CUSTOMER at its own expense shall make available a room on the Premises for installation of this Project that meets the environmental and other specifications set forth in Schedule B. Additionally, CUSTOMER shall perform its responsibilities and obligations as noted in the KLF & CUSTOMER RESPONSIBILITIES POLICY, a copy of which has been provided to CUSTOMER and which is incorporated herein by reference.

KLF shall provide all installation personnel, tools, equipment, and materials necessary to install this Project and shall install it in a workmanlike manner in accordance with responsibilities and obligations as noted in the KLF & CUSTOMER RESPONSIBILITIES POLICY.

10. DELIVERY, INSTALLATION AND IMPLEMENTATION

KLF shall deliver and install this Project as specified in Schedule A on CUSTOMER's Premises. KLF shall make all reasonable efforts to complete the installation by the intended Implementation Date specified in Schedule A. It is understood that all delivery and installation dates and the intended Implementation Date are approximate and KLF shall under no circumstances be liable for damages, special, incidental, consequential or otherwise, resulting from, or arising out of, the delivery, installation or Implementation of this Project.

IMPLEMENTATION DATE. Implementation shall mean the date on which the installed equipment and/or lines as provided and major components of this Project are functioning and able to perform substantially the function for which they are intended. Minor defects or omissions or substitutions in availability of certain features or equipment which do not materially affect the functioning of the entire System shall not affect the Implementation Date. In any case, Implementation will be deemed to have occurred if CUSTOMER is using the equipment installed.

In the event that installation of certain items of this Project on the original contract or amendments thereto is delayed beyond the Implementation Date, CUSTOMER shall be responsible for timely payment for all items of this Project that are delivered.

11. ACCEPTANCE OF SYSTEM

CUSTOMER shall promptly accept this Project on KLF's acceptance form if it conforms to all manufacturer's specifications per KLF's standard acceptance test. If within thirty (30) days following the Implementation Date, CUSTOMER discovers nonconformities, CUSTOMER shall send KLF written notice setting forth the details of such nonconformities.

KLF shall proceed with due diligence to cure nonconformities set forth in CUSTOMER's written notice to conform to manufacturer's specifications. KLF shall notify CUSTOMER in writing when it has cured the nonconformities and this Project shall then be deemed accepted.

This Project shall otherwise be deemed accepted by CUSTOMER if CUSTOMER fails (a) to sign KLF's acceptance form, and (b) to notify KLF in writing of nonconformities within thirty (30) days following the Implementation Date.

12. CANCELLATION

Cancellation of all of the fully executed Agreement or any material part(s) of this Project may only occur prior to the Implementation Date and must be made by CUSTOMER in writing to KLF. Cancellation shall be effective upon and is subject to payment by CUSTOMER of all contract costs pursuant to the Agreement for work incurred prior to receipt of the cancellation notice by KLF, plus a cancellation charge equal to 20% of the contracted amount for the items cancelled. It is agreed that all payments or charges under this section shall not be deemed to be a penalty.

13. SUBCONTRACTS

KLF may subcontract any part of the installation of this Project. However, subcontracting any portion of the installation shall not relieve KLF of its obligations or duties under this Agreement. Nothing herein shall limit the right of KLF to have any of its obligations performed by subsidiaries or parent or affiliated companies.

14. SYSTEM WARRANTY

KLF warrants that this Project and its components shall be free from defects in material and workmanship for the applicable periods indicated in KLF's WARRANTY SERVICE POLICY, which is incorporated herein by reference. Customer shall notify KLF of a defect in material and/or workmanship within ten (10) business days after discovery thereof, but not later than the expiration of the warranty period, otherwise such claims shall be deemed waived. Upon notification of a defect, KLF shall have the option to repair or replace the defective part of this Project, and such repair or replacement shall be CUSTOMER's sole and exclusive remedy. All replaced parts become the property of KLF. System components utilized will be from new parts or serviceable used parts equivalent to new in performance.

The warranties contained herein and other provisions of this Agreement shall be for the benefit of both CUSTOMER and the financing company, if applicable. KLF's and CUSTOMER's warranty obligations shall be further governed by KLF's WARRANTY SERVICE POLICY.

KLF FURNISHES THE ABOVE WARRANTIES IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED. KLF HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL WARRANTIES SHALL BE VOID AS TO SYSTEM COMPONENTS DAMAGED OR RENDERED UNSERVICEABLE BY: (1) THE ACTS OR OMISSIONS OF NON-KLF PERSONNEL OTHER THAN ITS AGENTS OR SUBCONTRACTORS; (2) MISUSE, THEFT, VANDALISM, LIGHTNING, FIRE, WATER, OR OTHER PERIL; (3) MOVING, RELOCATIONS, ALTERATION OF OR ADDITIONS TO THIS PROJECT NOT AUTHORIZED BY KLF IN WRITING; (4) CUSTOMER'S FAILURE TO PROVIDE THE ENVIRONMENT SPECIFIED IN SCHEDULE B; (5) POWER FAILURES OR SURGES. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

15. SYSTEM MAINTENANCE

For a period of one year from the Implementation Date, KLF shall perform without extra charge, all necessary maintenance to keep this Project in good working condition and repair, including all necessary labor and materials, during normal working hours (8:00 a.m. to 4:30 p.m. Monday through Friday except for KLF recognized holidays).

16. INDEMNIFICATION

KLF shall indemnify and save CUSTOMER harmless from any loss or damage to tangible property or from any loss or damage arising from bodily injury, including death, when, and to the extent, such loss or damage is caused by the negligent or intentional acts of KLF's personnel or subcontractors, provided that CUSTOMER gives KLF prompt written notice of any such claim of loss or damage and affords KLF the opportunity of sole defense and settlement of same.

Further, KLF shall indemnify and save CUSTOMER harmless from and against any mechanic's lien or claim of such lien resulting from or in connection with the work performed under this Agreement by KLF, its agents, or subcontractors.

KLF assumes no liability for a) any conditions, including asbestos existing before KLF's performance hereunder, or b) increased asbestos levels at any location, other than that where KLF is in physical contact with asbestos, provided that KLF follows customary safety practices when working with asbestos. KLF will restore, at CUSTOMER's expense, the areas of the Premises worked on by KLF or its subcontractors to the same level of fireproofing protection as existed immediately before KLF's work.

In any event, CUSTOMER retains the right to correct, at CUSTOMER's expense, those conditions that KLF or any of its subcontractors has determined adversely affects their employees' health and safety.

17. INFRINGEMENT INDEMNIFICATION

KLF shall indemnify and save CUSTOMER harmless from liability for damages arising from actions brought against CUSTOMER based upon a claim that this Project constitutes an infringement of any patent, copyright or trademark, provided that:

- (a) any alleged infringement does not arise out of the connection of this Project to non-KLF provided equipment; and
- (b) CUSTOMER gives KLF prompt written notice of any alleged infringement and affords KLF the opportunity of sole defense of any such allegation.

Should this Project become, or in KLF's opinion be likely to become, the subject of a claim of infringement, as noted above, KLF may exercise any of the following options:

- (a) procure for CUSTOMER the right to continue using this Project; or
- (b) modify this Project to make it non-infringing, or
- (c) If neither of the foregoing alternatives is reasonably practical, KLF, at its sole discretion, may grant CUSTOMER a refund for the depreciated value of this Project and accept its return.

No costs or expenses shall be incurred for the account of KLF without its written consent. This Infringement Indemnification states KLF's entire liability to CUSTOMER for patent, copyright, or trademark infringement.

18. SOFTWARE LICENSE

CUSTOMER is hereby granted a non-exclusive, fully paid, perpetual license to use the Software, but only in conjunction with this Project purchased under this Agreement. CUSTOMER receives no title or ownership rights to such Software.

Software is defined as computer programs supplied under this Agreement on magnetic tape, disk, semiconductor device or other memory device, or system memory including hardwired logic instructions, microcode, and documentation used to describe, maintain and use the programs.

CUSTOMER agrees that the Software is a trade secret of the manufacturer and/or KLF. CUSTOMER agrees to take reasonable precautions to protect the trade secret nature of the Software and to prevent its disclosure to unauthorized personnel. CUSTOMER may transfer this license only to a transferee who agrees in writing, delivered to KLF, to be bound by the terms and conditions of this Section.

19. INSURANCE

KLF shall provide and maintain insurance for KLF's protection with respect to liability arising out of KLF's performance hereunder, of the following types and limits of liability:

A. Workers' Compensation, which shall apply to all persons employed by KLF and which shall conform to the statutory requirements of each occurrence.

B. Comprehensive General Liability, with a combined single limit of liability of \$1,000,000 for bodily injury and property damage liability for each occurrence.

C. Business Automobile Liability, covering all owned, non-owned and hired automobiles of KLF, with combined property damage for each accident.

20. UNCONTROLLABLE CIRCUMSTANCES

Either party's performance of any part of this Agreement shall be excused to the extent that it is hindered, delayed, or otherwise made impractical by: a) flood, fire, war, strike, or riot; b) CUSTOMER's third-party telephone services provider; c) unavailability of parts or software; or d) any other cause (whether similar or dissimilar to those listed) beyond the reasonable control of that party. Upon the occurrence of any such events, the party whose performance is affected shall use reasonable efforts to notify the other party of the nature and extent of any such condition and mitigate its effect.

21. BREACH AND DEFAULT

CUSTOMER's breach of any payment obligation hereunder on the date such payment is due constitutes a default which requires no notice to be given by KLF. If either party breaches any other provision of this Agreement and fails to cure such breach within ten (10) days after receiving written notice from the other party, the breaching party shall be in default. However, a party shall not be in default if, within ten (10) days of receiving notice of a breach, it begins to cure such breach and in good faith continues to attempt to cure the breach. In such case, the party shall have reasonable time to cure the breach before being in default.

Upon CUSTOMER's default, KLF immediately may cease to perform its obligations hereunder and may exercise all rights and remedies available under applicable laws. Further, CUSTOMER agrees that, upon request, it will allow KLF to retake possession of this Project in addition to any other remedies available.

22. LIMITATION OF ACTIONS

No action, regardless of form, arising out of this Agreement shall be brought by CUSTOMER more than two years after such cause of action shall have accrued.

23. COLLECTION EXPENSES

KLF shall recover from CUSTOMER all its costs and reasonable attorney's fees incurred in the collection of any sums due under this Agreement. Late payments by the CUSTOMER shall accrue interest at the lesser of the rate of one and one-half percent (1 & 1/2%) per month or the highest rate permitted by law.

24. LIMITATION OF LIABILITY

KLF's liability to CUSTOMER for damages from any cause whatsoever and regardless of the form(s) of action, whether in contract or tort, including negligence or strict liability or otherwise, shall be limited to the amount of the progress payments paid under section 5 for this Project giving rise to or related to the claim of liability, less the amount of any items that inure to CUSTOMER's benefit. The above limitation of liability shall apply in all cases except those arising under Section 16, Indemnification, and Section 17, Infringement Indemnification.

25. CONSEQUENTIAL DAMAGES

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR COMMERCIAL LOSSES FROM ANY CAUSE, WHETHER OR NOT THAT PARTY HAS RECEIVED NOTICE OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES OR LOSSES, EVEN IF THE REMEDIES PROVIDED ARE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

The above exclusion shall include, but not exclusively, damages resulting from or arising out of the integration of this Project to other products or systems.

26. SYSTEM SECURITY

CUSTOMER shall assume responsibility for, and all liability for any losses related to, the implementation and utilization of any and all security features associated with this Project, including, but not limited to, modification of security and access codes.

27. WAIVER

Failure or delay on the part of KLF to exercise any right, power, privilege, or remedy hereunder shall not constitute a waiver thereof. A waiver of default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

28. NOTICES

All notices and other communications pertaining to this Agreement shall be in writing and shall be deemed to have been given by a party hereto if personally delivered to the other party or if sent by certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed to be given on the third business day after the mailing date. All notices or communications between CUSTOMER and KLF pertaining to this Agreement shall be addressed as specified on the face of this Agreement.

Either party may change its address from time to time by giving notice to that effect as provided herein.

29. MODIFICATIONS

No revision or modification of this Agreement shall be effective unless it refers to this Agreement and is in writing and signed by authorized representatives of both parties hereto.

30. SEVERABILITY

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

31. CONSTRUCTION

This Agreement shall be governed by and construed according to the laws of the State of Indiana. The Section titles of this Agreement are for convenience only and shall not define or limit any of the provisions hereof.

32. ASSIGNMENT

Except as noted in Section 6, Financing Option, and Section 13, Subcontracts, neither party shall assign or delegate all or any part of this Agreement without the express written consent of the other party, which consent shall not be unreasonably withheld, and any such attempted assignment or delegation shall be void. Notwithstanding, KLF may assign or delegate this Agreement to a purchaser of all of the stock, the entire business or substantially all of the assets of KLF.

33. OTHER DOCUMENTS

The terms and conditions of any purchase order or other document submitted by CUSTOMER which conflicts with or in any way purports to amend, delete or add to any of the terms and conditions of this Agreement are specifically objected to by KLF and shall be of no force or effect nor shall govern in any way the subject matter hereof.

34. EQUAL OPPORTUNITY

KLF shall observe its responsibilities under Executive Order 11246, as amended, and the regulations at 41 CFR Parts 60-1 through 60-60, and Sections 402/503 and the regulations at 41 CFR Parts 60-250 and 60-741.

35. ENTIRE AGREEMENT

This Agreement and its attached Schedules are intended as the complete and exclusive statement of the agreement between KLF and CUSTOMER and supersede all prior agreements, negotiations, and oral representations relating to the subject matter hereof.

KLF WARRANTY SERVICE POLICY

1. CUSTOMER agrees to provide KLF with full and unrestricted access, twenty-four (24) hours per day, seven (7) days per week to the Premises on which the equipment is located in order that warranty service may be performed as set forth herein. CUSTOMER agrees to designate one individual to be responsible for coordinating and reporting service calls to KLF with the specifics of the service problems. CUSTOMER agrees to provide the appropriate air conditioning, cleanliness, and environmental standards for the installed equipment as referenced in Schedule B.
2. KLF shall provide warranty service including labor and parts required to properly service the equipment during the warranty period. This WARRANTY SERVICE POLICY shall commence on the Implementation Date and shall be in effect for a period of one (1) year. This WARRANTY SERVICE POLICY, however, does not cover the replacement of parts lost or stolen or damaged by negligence or causes other than ordinary use. Further, this Policy does not cover labor and parts costs:
 - (a) for additions to or rearrangements, relocation, or removal of equipment, or
 - (b) arising from CUSTOMER's failure to adhere to its responsibilities as set forth in this Policy.
3. If persons other than KLF representatives perform warranty service or other service, and KLF is required to restore the equipment to good operating condition by reason thereof, or if CUSTOMER requests service outside the scope of this WARRANTY SERVICE POLICY, such repair or services will be furnished at KLF's prevailing rates for

time and materials. Any maintenance or service work performed by others during the period of this WARRANTY SERVICE POLICY without written consent of KLF shall cause this WARRANTY SERVICE POLICY to become null and void.

4. KLF shall dispatch a qualified technician(s) to the equipment location or perform repair from a remote location, as determined by KLF, within three (3) Coverage Hours after receiving notification of a major interruption of service. Major interruption is defined as:
 - a) The central or any attached processor cannot receive or retrieve information.
 - b) Any attendant's console cannot place or receive calls.
 - c) A minimum of 20% of all telephone data ports cannot place or receive calls.
 - d) A minimum of 20% of all trunks are inoperative.
 - e) Voice Mail cannot receive or retrieve information.
 - f) IVR cannot receive or retrieve information.

Coverage Hours are between 8:00 a.m. and 4:30 p.m. Monday through Friday, except for KLF recognized holidays. All other warranty service requests will normally be responded to within 24 hours of CUSTOMER's request during Coverage Hours. If service is requested by CUSTOMER and performed by KLF at any time other than Coverage Hours, CUSTOMER shall pay for such service at KLF's then prevailing rates for such hours.

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3. LIMITATION OF LIABILITY

In each instance in which you seek to recover damages from ROLM, regardless of the legal theory upon which your claim is based, ROLM will only be liable for a) bodily injury (including death) and damage to real property and tangible personal property for which ROLM is legally liable, and b) the amount of any other actual loss or damage arising from ROLM's performance or nonperformance under this Agreement, up to \$100,000.

Under no circumstances will ROLM be liable for losses or damages resulting from a) third party claims against you or claims by you based on third party claims (other than those referred to in item a in the first paragraph of this Section);, b) loss of stored, transmitted or recorded data; c) economic consequential damages (including lost profits or savings), incidental damages or punitive damages, even if ROLM or a PSR is informed of their possibility; d) Software outside the United States and Puerto Rico; or e) inability to perform under this Agreement, in whole or in part, caused by acts of God or any other thing beyond ROLM's control.

This Section sets forth the maximum collective responsibility of ROLM, ROLM Systems, other suppliers of Software, Software developers, subcontractors and other agents of ROLM under this Agreement, and all such parties are intended beneficiaries of this Section.

4. GENERAL

You may terminate your license at any time by destroying all your copies of the Software or as otherwise described in this Agreement.

ROLM may terminate your license if you do not comply with the terms of this Agreement. Upon such termination, you will destroy all your copies of the Software.

Any attempt to sublicense, rent, lease, assign or, except as expressly provided herein, to transfer any copy of the Software is void.

Neither party may bring a legal action more than two years after the cause of action arose.

The laws of the State of New York govern this Agreement.

ADDENDUM

The City of Fort Wayne Information Systems Request for Proposals Telecommunications July 29, 1993 and our responses as it relates to the scope of the project are included as part of the agreement.

KLF BUSINESS COMMUNICATIONS SYSTEMS

SCHEDULE A

City of Fort Wayne
Police Operations Center

February 28, 1994

I. OBJECTIVE Structured Wiring

- 200 locations (4 - 4 pair Category 5 on Quad RJ45 jacks.)
- All 4 pairs (voice & data) terminate on RJ45 Patch Panels located in telephone closets.
- All horizontal and Riser cable is PVC.
- All riser cable has been sized according to City's specification of 10 pair per station location, 50 station locations per floor plus 25% growth. (625 pair)
- Patch cords are not included.
- Patch cord system from riser to horizontal is designed with 110 to RJ45 type patch cords (not included as stated above).
- MDF does not provide for Telco side terminations, however, adequate room has been provided on the MDF rack.
- Any required conduit, wire mold, floor sleeves or duct work is not included.
- Grounding backbone system is not addressed.

KLF BUSINESS COMMUNICATIONS SYSTEMS

SCHEDULE A

City of Fort Wayne

City County Building

February 18, 1994

I. OBJECTIVE Structured Wiring

- 584 locations (4 - 4 pair Category 5 on Quad RJ45 jacks.)
- All 4 pairs (voice & data) terminate on RJ45 Patch Panels located in telephone closets.
- All horizontal and riser cable is PVC.
- All riser cable has been sized according to City's specification plus 25% growth.
- Patch cords are not included.
- Patch cord system from riser to horizontal is designed with 110 to RJ45 type patch cords (not included as stated above).
- MDF does not provide for Telco side terminations, however, adequate room has been provided on the MDF rack.
- Any required conduit, wire mold, floor sleeves or duct work is not included.
- Grounding backbone system is not addressed.

<u>Quantity</u>	<u>Description</u>
2	Homaco Frame
25	300 pair ATT block
3,400	100 pair Level 3 PVC Inside Cable
18,350	200 pair Level 2 PVC Inside Cable
2,800	50 pair Level 2 PVC Inside Cable
16	7 ft x 19" Rack
38	64 Port Panel
3	32 Port Panel
41	110 Brackets
74	Wire Minder
24	Wire Minder
2	Vertical Organizers 3"
24	Vertical Organizers 6"
14	Vertical Control Brackets
56	Vertical Control Brackets
112	Vertical Control Brackets
1,168	Patch Panel Inserts

<u>Quantity</u>	<u>Description</u>
340,000	4 pair Level 5 PVC Inside Wire
584	Face Plates
584	Surface Boxes
1,168	Jack Plate Inserts
2,300	25 pair Level 3 Inside PVC Cable

Material		\$175,809.34
Labor		136,822.50
	Total	<u>\$312,631.84</u>

KLF Business Communications Systems

SCHEDULE A

City of Fort Wayne

February 18, 1994

Infortext

Facilities Management and Integrated Cable Management System

SOFTWARE

Facilities Management System 2500
(one user access)

Integrated Cable Management

Cable Management Schematic Option

Installation and Training of FM and Cable Management

Remote Diagnostics

Sub-Total

\$16,890.00

HARDWARE: Optional

Compaq 486 PC Prolinea 4/25S Model 120/w
4 Mb RAM, 120 Mb hard drive, MS-DOS 5.0,
Windows 3.1, Mouse
With Compaq VGA Color Monitor (14")

\$1,600.00

2400 Baud Hayes Compatible Modem
(For remote diagnostics)

\$150.00

Sub-Total

\$1,750.00

Total System Price

\$18,640.00

Maintenance and Warranty Information

One year warranty included with system

Second Year Software maintenance \$1,500.00

KLF Business Communication Systems
 SCHEDULE A
 City County Building/POC/Lafayette Complex
 KLF NETWORK COMPONENTS
 2/25/94

Qty.	Description	Each	Total
CENTRAL HUB			
1	DEChub 900 Multiswitch w/power supply	\$3,990.00	\$3,990.00
2	DECconcentrator 900MX (DEChub900 based model, preconfigured)	7,500.00	15,000.00
1	DECconcentrator 900MX (DEChub 900 based model, custom)	3,600.00	3,600.00
1	Multimode fiber ANSI MIC connector	835.00	835.00
5	Single mode fiber MIC connector	3,166.00	15,830.00
1	DECbridge 900MX (DEChub 900 based model)	7,490.00	7,490.00
2	DEChub 900 power supply option	990.00	1,980.00
2	Fiber Media Access Unit	360.00	720.00
BASEMENT			
1	DEChub 900 Multiswitch w/power supply	3,990.00	3,990.00
1	DECbridge 900MX (DEChub 900 based model)	7,490.00	7,490.00
2	Thinwire Media Access Unit	135.00	270.00
1	DEChub 900 power supply option	990.00	990.00
1st. FLOOR			
1	DEChub 900 Multiswitch w/power supply	3,990.00	3,990.00
1	DECbridge 900MX (DEChub 900 based model)	7,490.00	7,490.00
1	DECrepeater 900TM (DEChub 900 based)	2,990.00	2,990.00
1	DEChub 900 power supply option	990.00	990.00
2nd. FLOOR			
1	DEChub 900 Multiswitch w/power supply	3,990.00	3,990.00
1	DECbridge 900MX (DEChub 900 based model)	7,490.00	7,490.00
2	DECrepeater 900TM (DEChub 900 based)	2,990.00	5,980.00
2	DEChub 900 power supply option	990.00	1,980.00

WALLACE HUB LOCATION

1	DEChub 900 Multiswitch w/power supply	3,990.00	3,990.00
1	DECconcentrator 900MX (DEChub 900 based model, custom)	3,600.00	3,600.00
1	Single mode fiber MIC connector	3,166.00	3,166.00
1	DECbridge 900MX (DEChub 900 based model)	7,490.00	7,490.00
1	DECrepeater 900TM (DEChub 900 based)	2,990.00	2,990.00
2	Fiber Media Access Unit	360.00	720.00
1	DECrepeater 90FL	1,455.00	1,455.00
2	DEChub 900 power supply option	990.00	1,980.00

WALLACE SATELITE LOCATIONS

4	DEChub ONE single-slot docking station	200.00	800.00
4	DECrepeater 900TM (DEChub 900 based)	2,990.00	11,960.00
4	Fiber Media Access Unit	360.00	1,440.00

POC HUB LOCATION

1	DEChub 900 Multiswitch w/power supply	3,990.00	3,990.00
1	DECconcentrator 900MX (DEChub 900 based model, custom)	3,600.00	3,600.00
1	Single mode fiber MIC connector	3,166.00	3,166.00
1	DECbridge 900MX (DEChub 900 based model)	7,490.00	7,490.00
1	DECrepeater 900TM (DEChub 900 based)	2,990.00	2,990.00
2	Fiber Media Access Unit	360.00	720.00
1	DECrepeater 90FL	1,455.00	1,455.00
2	DEChub 900 power supply option	990.00	1,980.00

POC SATELITE LOCATIONS

4	DEChub ONE single-slot docking station	200.00	800.00
4	DECrepeater 900TM (DEChub 900 based)	2,990.00	11,960.00
4	Fiber Media Access Unit	360.00	1,440.00

INSTALLATION

96 hrs	Network Configuration Support (Area Network Consultant)	200.00	19,200.00
70 hrs	Hub Installation		12,500.00

NETWORK MANAGEMENT

1	NetSupport Shared Services	34,500.00	34,500.00
	SUBTOTAL:		331,277.00

SPARES

1	Single mode fiber MIC connector	3,166.00	3,166.00
1	DECbridge 900MX (DECHub 900 based model)	7,490.00	7,490.00
1	Fiber Media Access Unit	360.00	360.00
1	DECrepeater 900TM (DECHub 900 based)	2,990.00	2,990.00
1	DECHub 900 power supply option	990.00	990.00
1	DECHub ONE single-slot docking station	200.00	200.00

	SUBTOTAL (Spares)		15,196.00
	GRAND TOTAL		\$346,473.00

DIGEST SHEET

TITLE OF ORDINANCE SPECIAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

SYNOPSIS OF ORDINANCE APPROVES CONTRACT FOR CERTAIN INTERNAL
WIRING FOR TELECOMMUNICATIONS ELECTRONICS FOR THE CITY-COUNTY
BUILDING, POLICE OPERATIONS CENTER AND THE LAFAYETTE STREET
COMPLEX.

D-94-02-16

EFFECT OF PASSAGE CONTRACT IS APPROVED.

EFFECT OF NON-PASSAGE CONTRACT IS NOT APPROVED.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

\$750,000.00.

ASSIGNED TO COMMITTEE (PRESIDENT) _____

BILL NO. S-94-02-16

REPORT OF THE COMMITTEE ON
FINANCE
CLETUS R. EDMONDS - DONALD J. SCHMIDT - CO-CHAIR
ARCHIE L. LUNSEY
DAVID C. LONG

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving CONTRACT between
KLF BUSINESS COMMUNITY SYSTEMS, INC. and the City of Fort Wayne, Indiana,
in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Cletus Edmonds

David Long

D.J. Schmidt

Archie Lunsey

David C. Long

DATED: 3-8-94

Sandra E. Kennedy
City Clerk